IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

GETAGADGET, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No.** 1:16-cv-1240
	§	
PORTER WORLD TRADE, INC.,	§	
	§	**JURY TRIAL DEMANDED**
Defendant.	§	
	§	

ORIGINAL COMPLAINT

Plaintiff, Getagadget, LLC ("Getagadget"), files this Original Complaint against Defendant, Porter World Trade, Inc. ("Porter World"), and for cause of action would show the Court as follows:

I. PARTIES

1. Plaintiff, Getagadget, LLC, is a Texas limited liability company with its principle place of business at 6406 Burleson Rd., Suite #120, Austin, Texas 78744.

2. Upon information and belief, Defendant, Porter World Trade, Inc., is a Florida corporation with its principal place of business at 405 Atlantis Road, Suite E115, Cape Canaveral, Florida 32920. Porter World manufactures, uses, sells, and/or offers to sell in the United States, and/or imports into the United States, bottle and can insulators. Porter World's bottle and can insulators are marketed, offered for sale, and/or sold throughout the United States, including within this District.

II. JURISDICTION AND VENUE

3. This is an action arising under the patent laws of the United States, 35 U.S.C. § 101 *et seq*. This Court has exclusive subject matter jurisdiction under 28

U.S.C. §§ 1331 and 1338.

4. This Court has personal jurisdiction over Defendant Porter World for at least the following reasons: (i) Porter World regularly transacts and solicits business, engages in other persistent course of conduct, and/or derives substantial revenue from products and/or services provided to individuals in the State of Texas; (ii) Porter World has purposefully established substantial, systematic and continuous contacts with Texas and this District and expects or should reasonably expect to be subjected to this Court's jurisdiction; and (iii) Porter World, directly or through subsidiaries or intermediaries (including distributors, retailers and others), sells or offers for sale the infringing products in Texas and this District.

5. Venue is proper in the Western District of Texas under 28 U.S.C. §§ 1391(b)-(d) and 1400(b).

III. THE '862 PATENT

6. United States Patent No. D601,862 ("the '862 Patent"), titled "Bottle Insulator with Integral Bottle Cap Remover," was duly and legally issued after full and fair examination to inventor James Douglas Welch, on October 13, 2009, and a copy of the '862 Patent is attached hereto as Exhibit A.

7. Plaintiff Getagadget owns by assignment the entire right, title and interest in the '862 Patent.

IV. THE '880 PATENT

8. United States Patent No. D675,880 ("the '880 Patent"), titled "Beverage Container Insulator," was duly and legally issued after full and fair examination to inventor James Douglas Welch, on February 12, 2013, and a copy of the '880 Patent is attached

hereto as Exhibit B.

9. Plaintiff Getagadget owns by assignment the entire right, title and interest in the ’880 Patent.

V. FACTUAL BACKGROUND

10. Getagadget is a leader in bottle and can insulators, as well as novelty products and other items. The inventor of the ‘862 Patent and the ‘880 Patent is an owner of Getagadget.

11. Porter World is and/or has been making, using, selling, and/or offering to sell products in the United States, and/or importing into the United States, including, but not limited to, products identified by Porter World as “DKN029” (the “Bottle Insulator Products”), which infringe the claim of the ‘862 Patent.

12. Porter World is and/or has been making, using, selling, and/or offering to sell products in the United States, and/or importing into the United States, including, but not limited to, products identified by Porter World as “DKN045” (the “Can Insulator Products”), which infringe the claim of the ‘880 Patent.

13. Porter World is and/or has been advertising on the Internet and otherwise products identified by Porter World as “DKN029” (the “Bottle Insulator Products”), which infringe the claim of the ‘862 Patent.

14. Porter World is and/or has been advertising on the Internet and otherwise products identified by Porter World as “DKN045” (the “Can Insulator Products”), which infringe the claim of the ‘880 Patent.

15. Porter World has not obtained a license under the ‘862 Patent.

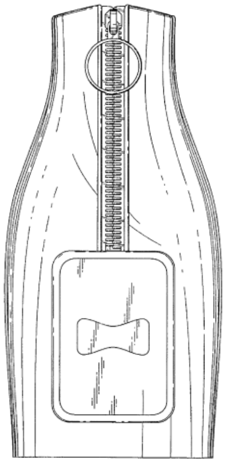
16. Porter World has not obtained a license under the ‘880 Patent.

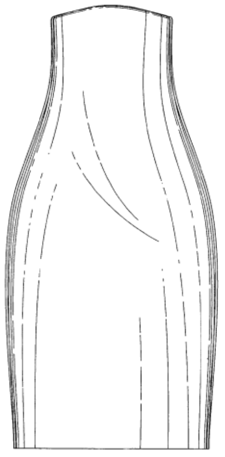
Count 1 – DIRECT INFRINGEMENT OF THE ‘862 PATENT

17. Getagadget repeats and realleges the allegations in paragraphs 1-16 as though fully set forth herein. As described below, Porter World has infringed and/or continues to infringe the ‘862 Patent.

18. Porter World’s making, using, selling, and/or offering to sell in the United States, and/or importing into the United States, the Bottle Insulator Products infringes the claim of the ‘862 Patent.

19. Porter World’s infringement is illustrated in the side-by-side comparisons of the ‘862 Patent to Porter World’s Bottle Insulator Products of its website, shown below:

‘862 Patent	**Getagadget Product**	**Porter World Bottle Insulator Products (example)**
	Party Popper	BOTTLE OPENER

		BOTTLE SUIT FULL COLOR RON JON SURF SHOP Myrtle Beach, SC

20. An ordinary observer would be deceived by the similarity of the Porter World Bottle Insulator Products to the ‘862 Patent.

21. Accordingly, Porter World infringed and continues to infringe the ‘862 Patent by making, using, selling and/or offering to sell in the United States, and/or importing into the United States, one or more of the Bottle Insulator Products identified in this Complaint, which embody the design covered by the ‘862 Patent.

22. Getagadget is entitled to recover from Porter World for its acts and practices of infringement the damages sustained as a result of Porter World’s wrongful acts in an amount subject to proof at trial.

23. Getagadget is entitled to recover from Porter World for its acts and practices of infringement the total profits of Porter World as a result of its wrongful acts in an amount subject to proof at trial.

24. In addition, the infringing acts and practices of Porter World have caused, are causing, and unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Getagadget for which there is no adequate remedy at law, and for which Getagadget is entitled to injunctive relief under 35 U.S.C. §

283.

25. Porter World received actual notice of its infringement of the ‘862 Patent, at least by way of this Complaint.

Count 2 – INDUCED INFRINGEMENT OF THE ‘862 PATENT

26. Getagadget repeats and realleges the allegations in paragraphs 1-25 as though fully set forth herein. As described below, Porter World has induced and/or continues to induce infringement of the ‘862 Patent.

27. Porter World also indirectly infringes the ‘862 Patent. Porter World has willfully contributed to and has induced direct infringement of the ‘862 Patent by offering and selling Bottle Insulator Products through distributers, retailers, and or end users that, upon sale or use, will directly infringe the ‘862 Patent.

28. Porter World indirectly infringes the claim of the ‘862 Patent by inducing the direct infringement of others, including, without limitation, distributors and purchasers of the Bottle Insulator Products, in accordance with 35 U.S.C. § 271(b).

29. Porter World had actual notice of the ‘862 Patent, at least by way of this Complaint.

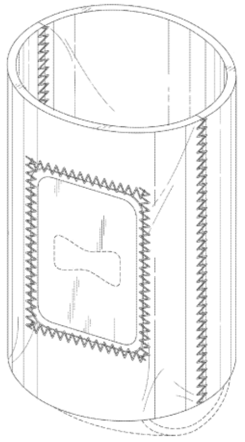
30. Porter World’s affirmative acts of offering for sale and selling the Bottle Insulator Products will induce distributors and purchasers of the Bottle Insulator Products, through the normal and intended distribution and use of the Bottle Insulator Products, to infringe the ‘862 Patent. Accordingly, Porter World performed the acts that constitute induced infringement, and would induce actual infringement, with the knowledge of the ‘862 Patent and with the specific intent, knowledge or willful blindness that the induced acts would constitute infringement.

Count 3 – DIRECT INFRINGEMENT OF THE ‘880 PATENT

31. Getagadget repeats and realleges the allegations in paragraphs 1-30 as though fully set forth herein. As described below, Porter World has infringed and/or continues to infringe the ‘880 Patent.

32. Porter World’s making, using, selling, and/or offering to sell in the United States, and/or importing into the United States, the Can Insulator Products infringes the claim of the ’880 Patent.

33. Porter World’s infringement is illustrated in the side-by-side comparisons of the ‘880 Patent to Porter World’s Can Insulator Products of its website, shown below:

‘880 Patent	**Porter World Can Insulator Products (example)**
	

34. An ordinary observer would be deceived by the similarity of the Porter World Can Insulator Products to the ‘880 Patent.

35. Accordingly, Porter World infringed and continues to infringe the ‘880 Patent by making, using, selling and/or offering to sell in the United States, and/or

importing into the United States, one or more of the Can Insulator Products identified in this Complaint, which embody the design covered by the ‘880 Patent.

36. Getagadget is entitled to recover from Porter World for its acts and practices of infringement the damages sustained as a result of Porter World’s wrongful acts in an amount subject to proof at trial.

37. Getagadget is entitled to recover from Porter World for its acts and practices of infringement the total profits of Porter World as a result of its wrongful acts in an amount subject to proof at trial.

38. In addition, the infringing acts and practices of Porter World have caused, are causing, and unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Getagadget for which there is no adequate remedy at law, and for which Getagadget is entitled to injunctive relief under 35 U.S.C. § 283.

39. Porter World received actual notice of its infringement of the ‘880 Patent, at least by way of this Complaint.

Count 4 – INDUCED INFRINGEMENT OF THE ‘880 PATENT

40. Getagadget repeats and realleges the allegations in paragraphs 1-39 as though fully set forth herein. As described below, Porter World has induced and/or continues to induce infringement of the ‘880 Patent.

41. Porter World also indirectly infringes the ‘880 Patent. Porter World has willfully contributed to and has induced direct infringement of the ‘880 Patent by offering and selling Can Insulator Products through distributers, retailers, and or end users that, upon sale or use, will directly infringe the ‘880 Patent.

42. Porter World indirectly infringes the claim of the '880 Patent by inducing the direct infringement of others, including, without limitation, distributors and purchasers of the Can Insulator Products, in accordance with 35 U.S.C. § 271(b).

43. Porter World had actual notice of the '880 Patent, at least by way of this Complaint.

44. Porter World's affirmative acts of offering for sale and selling the Can Insulator Products will induce distributors and purchasers of the Can Insulator Products, through the normal and intended distribution and use of the Can Insulator Products, to infringe the '880 Patent. Accordingly, Porter World performed the acts that constitute induced infringement, and would induce actual infringement, with the knowledge of the '880 Patent and with the specific intent, knowledge or willful blindness that the induced acts would constitute infringement.

DEMAND FOR JURY TRIAL

Getagadget hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Getagadget respectfully requests that this Court enter judgment in its favor and grant the following relief:

A. Adjudge that Defendant Porter World infringes the '862 Patent;

B. A judgment and order requiring Porter World to pay Getagadget all damages caused by Porter World's infringement of the '862 Patent, pursuant to 35 U.S.C. § 284, or requiring Porter World to pay Getagadget the total profit made by Porter World from its infringement of the '862 Patent, pursuant to 35 U.S.C. § 289;

C. A judgment and order requiring Porter World to pay Getagadget increased damages up to three times the amount found or assessed against Porter World for infringement of the ‘862 Patent, pursuant to 35 U.S.C. § 284;

D. An order against Porter World for an accounting of profits in respect of the ‘862 Patent;

E. Enter a preliminary injunction, and following trial, a permanent injunction enjoining Defendant Porter World, together with any and all parent or affiliated companies or corporations, and all officers, directors, agents, servants, employees, distributors, attorneys and all others acting in privity or through them, from further acts of infringement of the ‘862 Patent;

F. Adjudge that Defendant Porter World infringes the ‘880 Patent;

G. A judgment and order requiring Porter World to pay Getagadget all damages caused by Porter World’s infringement of the ‘880 Patent, pursuant to 35 U.S.C. § 284, or requiring Porter World to pay Getagadget the total profit made by Porter World from its infringement of the ‘880 Patent, pursuant to 35 U.S.C. § 289;

H. A judgment and order requiring Porter World to pay Getagadget increased damages up to three times the amount found or assessed against Porter World for infringement of the ‘880 Patent, pursuant to 35 U.S.C. § 284;

I. An order against Porter World for an accounting of profits in respect of the ‘880 Patent;

J. Enter a preliminary injunction, and following trial, a permanent injunction enjoining Defendant Porter World, together with any and all parent or affiliated companies or corporations, and all officers, directors, agents, servants, employees, distributors, attorneys and all others acting in privity or through them, from further acts of infringement of the '880 Patent;

K. A judgment and order requiring Porter World to pay Getagadget pre-judgment and post-judgment interest to the full extent allowed under the law;

L. A judgment and order requiring Porter World to pay Getagadget supplemental damages or profits for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed;

M. A determination that this action is an exceptional case pursuant to 35 U.S.C. § 285.

N. An award of Getagadget's attorneys' fees for bringing and prosecuting this action;

O. An award of Getagadget's costs and expenses incurred in bringing and prosecuting this action; and

P. Such further and additional relief as the Court may deem appropriate and just under the circumstances.

Dated: November 21, 2016

Respectfully submitted,

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